IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

OP.No. 35285 of 2000(A)

PETITIONER:

PONDAY ROLLER FLOUR MILLS PVT.LIMITED.,
REPRESENTED BY ITS MANAGING PARTNER P.K.AHAMMED,
PUTHIYANGADI, KOZHIKODE – 673 021.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENTS:
----

1. **THE STATE OF KERALA, REPRESENTED BY THE SECRETARY,**
   DEPARTMENT OF FOOD AND CIVIL SUPPLIES,
   GOVERNMENT SECRETARIAT, TRIVANDRUM.

2. **THE KERALA STATE CIVIL SUPPLIES CORPORATION,**
   P.B.NO.2030, MAVELI BHAVAN GANDHI NAGAR,
   KOCHI – 682 020 REPRESENTED BY ITS MANAGING DIRECTOR.

BY ADV. SRI.JOY GEORGE, SC, SUPPLYCO for R2
BY GOVERNMENT PLEADER SRI. M.R. SABU for R1

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.60346/2000 IN O.P.NO.35285/2000 A

DISMISSED

4/09/2007 **SD/- ANTONY DOMINIC, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE COMMUNICATION NO.4-1/97-DR.III DTD.18/9/1997 ISSUED BY THE GOVERNMENT OF INDIA SENT TO THE R1.**

EXT.P2: **COPY OF THE INVITATION TO TENDER AND INSTRUCTION TO TENDERERS FOR CONVERSION AND SUPPLY OF WHOLE WHEAT ATTA DTD. 5/10/1998.**

EXT.P3: **COPY OF THE CERTIFICATE OF ANALYSE DTD. 24/12/1998 ISSUED BY STERLING FARM R AND D CENTRE TO THE PETITIONER.**

EXT.P4: **COPY OF THE ORDER DTD. 23/01/1999 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**

EXT.P5: **COPY OF THE ORDER DTD. 19/02/99 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**

EXT.P6: **COPY OF THE PROCEEDINGS DTD. 20/07/1999 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**

EXT.P7: **COPY OF THE PROCEEDINGS DTD. 28/02/2000 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**

EXT.P8: **COPY OF THE PROCEEDINGS DTD. 18/02/2000 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**

EXT.P9: **COPY OF THE REPRESENTATION DTD. 9/06/2000 SENT BY THE PETITIONER TO THE 2ND RESPONDENT.**

/TRUE COPY/

P.A.TO JUDGE

KSS

ANTONY DOMINIC,J.

O.P No. 35285 of 2000

Dated this the 4th day of September, 2007

J U D G M E N T

The prayers in this writ petition are to quash Exhibits P6, P7 and P8 and to direct the 2nd respondent to refund the amount of penalty imposed and recovered from the petitioner with interest. The facts of the case are that pursuant to Exhibit P2 invitation to tender for conversion and supply of whole wheat to whole wheat Atta, petitioner had submitted his tender which was accepted by the 2nd respondent. Thereafter, orders were issued Exhibits, P3, P4 and P5 requiring him to lift wheat from the depot of the Food Corporation of India, convert the same and deliver Atta, at the nominated depots of the 2nd respondent. It is stated that pursuant to Exhibits P3, P4 and P5, petitioner delivered the quantity and that the goods so delivered, were matching in all respects with the quality specifications contained in Exhibit-P1. According to the petitioner, if there was any deviation from the quality specification, the 1st respondent could have rejected the goods.

2. It is stated that at the time of transportation and delivery, samples were drawn and that no complaint regarding

quality was intimated. However, much later to the supply made by the petitioner, by Exhibits P6, P7 and P8, penalty was imposed at the percentage indicated therein and amount was illegally realised from the petitioner. The imposition of penalty as per Exhibits P6 to P8 that is sought to be quashed in this writ petition.

3. I have considered the contentions. It is evident from the Exhibits that the moisture content of the goods supplied by the petitioner, exceeded the percentage specified in Exhibit-P2 and the excess percentage is also indicated in Exhibits P6, P7 and P8. In terms of Exhibit -P2 tender notification, if quality is not adhered to the specification, the Corporation could have rejected the stock and such rejection could have resulted in forfeiture of security deposit made by the tenderer like the petitioner. However, the tender conditions also enabled that the Managing Director of the Corporation to accept such stock which was not as per the specifications in Exhibit-P2, after imposing penalty for the specifications exceeding the limits mentioned in Exhibit-P2.

4. As already stated from Exhibits P6 to P8 itself, it is evident that goods supplied by the petitioner did not match the quality specifications. For the non-compliance with the specifications, the respondent was entitled to impose penalty and accept goods. This is precisely what has been done as per Exhibits P6 and P8. Thus, the imposition of penalty on the petitioner is in terms of the conditions of the contract entered into between the petitioner and the 2nd respondent. The action taken in terms of contract cannot be faulted and the petitioner cannot seek to quash Exhibits P6 to P8.

The writ petition lacks in merit and it is only to be dismissed.

(ANTONY DOMINIC, JUDGE)

ma

/True copy/

P.A to Judge

K.THANKAPPAN,J

CRL.A. NO.92 OF 1999

ORDER

25th May, 2007